

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

LIBERTY MUTUAL INSURANCE COMPANY,	)	CIVIL ACTION
	)	NO. 96-10804-DPW
	)	NO. 1:04-CV-10969-DPW
Plaintiff,	)	(Sutton Brook)
	)	
v.	)	
	)	
THE BLACK & DECKER CORPORATION,	)	
BLACK & DECKER, INC., BLACK & DECKER	)	
(U.S.) INC., EMHART CORPORATION, and	)	
EMHART INDUSTRIES, INC.,	)	
	)	
Defendants.	)	
	)	

**AFFIDAVIT OF JAMES J. NICKLAUS IN SUPPORT  
OF BLACK & DECKER'S MOTION FOR SUMMARY  
JUDGMENT REGARDING THE SUTTON BROOK SITE**

James J. Nicklaus deposes and says:

1. I am a member of the bar of this Commonwealth and am an attorney with Willcox, Pirozzolo & McCarthy, Professional Corporation, counsel for The Black & Decker Corporation, et al., in this action.

2. Exhibit A to the Appendix to Black & Decker's Memorandum in Support of its Motion for Summary Judgment Regarding the Sutton Brook Site, filed herewith ("Appendix"), is a copy of the Unilateral Administrative Order for Removal Action regarding the Sutton Brook Disposal Area Superfund Site, Tewksbury, Massachusetts dated October 10, 2001.

3. Exhibit B to the Appendix is a copy of the Supplemental Expert Report of Michael P. Bonchonsky Concerning Rocco's Landfill (also known as the Sutton Brook Disposal Area) dated November 12, 2004 in this action.

4. Exhibit C to the Appendix is a copy of the Notice of Potential Liability and Demand for Payment regarding the Sutton Brook Disposal Area Superfund Site, Tewksbury, Massachusetts dated June 22, 2001.

5. Exhibit D to the Appendix is a copy of the Supplemental Expert Report of Jerome C. Muys, Jr. dated September 29, 2004 in this action.

6. Exhibit E to the Appendix is a copy of the Special Notice Pursuant to Section 122(e) of CERCLA for a Remedial Investigation and Feasibility Study at the Sutton Brook Disposal Area Superfund Site, Tewksbury, Massachusetts dated May 10, 2002.

7. Exhibit F to the Appendix is a copy of a letter dated January 29, 2003 from Man Chak Ng of the United States Environmental Protection Agency to Jerome C. Muys, Jr. of Swidler Berlin Shereff Friedman LLP with an attached Evidence Summary.

8. Exhibit G to the Appendix is a copy of a letter dated October 16, 2002 from Richard L. Binder of Willcox, Pirozzolo & McCarthy to Denise Szuniewicz of Liberty Mutual Insurance Company.

9. Exhibit H to the Appendix is a copy of a letter dated February 5, 2003 from Denise M. Szuniewicz of Liberty Mutual Insurance Company to Richard L. Binder of Willcox, Pirozzolo & McCarthy.

10. Exhibit I to the Appendix is a copy of a letter dated July 21, 2003 from Jack R. Pirozzolo of Willcox, Pirozzolo & McCarthy to Denise M. Szuniewicz of Liberty Mutual Insurance Company.

11. Exhibit J to the Appendix is a copy of the Supplemental Expert Report of Jerome C. Muys, Jr. dated September 29, 2004 in this action.

12. Exhibit K to the Appendix is a copy of a letter dated March 16, 2004 from Kim A. Olson of Liberty Mutual Insurance Company to Richard L. Binder of Willcox, Pirozzolo & McCarthy.

13. Exhibit L to the Appendix is a copy of a schedule entitled "Sutton Brook Unreimbursed Defense Costs." I prepared this schedule by compiling all of the invoices for Black & Decker's defense costs relating to Sutton Brook which have not been reimbursed (in whole or in part) by Liberty Mutual. Copies of those invoices were provided to Liberty Mutual prior to or in the course of this action..

14. Exhibit M to the Appendix is a copy of a document entitled "Case Handling Guide, Claims Department."

15. Exhibit N to the Appendix contains copies of excerpts from the trial testimony of Franklin Woodard in Civil Action No. 96-10804-DPW.

16. Exhibit O to the Appendix contains copies of pages from a 1966 insurance policy issued by Liberty Mutual Insurance Company to United Shoe Machinery Corporation.

17. Exhibit P to the Appendix is a copy of a January 20, 2004 Stipulation, filed in Civil Action No. 96-10804-DPW.

18. Exhibit Q to the Appendix is a copy of the Expert Report of Jerome C. Muys, Jr. dated September 16, 2003 in this action.

19. Documents contained in the Appendix do not always contain the enclosures referred to in the document.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 30, 2004.

/s/ James J. Nicklaus  
James J. Nicklaus